

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

UNITED STATES OF AMERICA)	
)	
)	
v.)	No. 1:16-cr-00224-TSE-1
)	
DAN HORSKY,)	
)	
Defendant.)	
)	

MOTION TO FILE UNDER SEAL

Pursuant to LCrR 49(E) Defendant, through counsel, respectfully moves this Court to allow Defendant’s Memorandum Regarding Defendant’s Confidential Cooperation With Government In Aid Of Criminal Investigation (“Cooperation Memo”), to be filed under seal as an addendum to Defendant’s Sentencing Memorandum In Support Of A Sentence Of Probation With Special Conditions.

This sealing is necessary because the document to be sealed contains information pertinent to the integrity of a criminal investigation that would be compromised with the release of the contained information to the public. In addition, the government has informed Defendant that a U.S.S.G. § 5K1.1 motion (“5K motion”) will be filed under seal pursuant to LCrR 49(J) and the information contained in the 5K motion will address the same subject matter as the Cooperation Memo.

The continued integrity of a criminal investigation is one of the rare interests that justifies keeping a court filing under seal. *United States v. Hirsh*, No. 03-58, 2007 WL 1810703, at *2 (E.D. Pa. June 22, 2007). Protection is justified under the law enforcement privilege. *Id.* (citing *United States v. Amodeo*, 44 F.3d 141, 147 (2d Cir. 1995)). The Eastern District of Virginia has recognized the law enforcement privilege as protecting “information pertaining to law

enforcement techniques and procedures, information that would undermine the confidentiality of sources, information that would endanger witness and law enforcement personnel or the privacy of individuals involved in the investigation, and information that would otherwise interfere with an investigation.” *United States v. Matish*, No. 4:16-cr-16, 2016 WL 3545776, at *5 (E.D. Va. June 23, 2016) (quoting *In re City of New York*, 607 F.3d 923, 944 (2d. Cir. 2010)) (internal quotations omitted). If the privilege applies, the Court is then tasked with balancing the public interest in nondisclosure with the need for access to the information. *Id.*

The applicability of the law enforcement privilege is clear. The information contained in the Cooperation Memo directly pertains to cooperation in an ongoing criminal investigation. Furthermore, it pertains to the same subject matter as the government’s 5K motion which is itself, by rule, permitted to be protected under seal pursuant to LCrR 49(J). The criminal investigation in question would be compromised with the release of the information contained in the Cooperation Memo that outweighs any interest in the public having access to this filing.

Accordingly, Defendant respectfully moves that the Cooperation Memo be filed under seal.

Dated: February 3, 2017

Respectfully submitted,

/s/ Matthew C. Hicks
MATTHEW C. HICKS
Virginia Bar Number 48377
CAPLIN & DRYSDALE, CHTD.
One Thomas Circle, N.W., Suite 1100
Washington, D.C. 20005
Telephone: (202) 862-7852
Facsimile: (202) 429-3301
E-Mail: mhicks@capdale.com

MARK E. MATTHEWS

SETH KOSSMAN
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

100 Light Street, 19th Floor
Baltimore, MD 21202
Telephone: (410) 862-1095
Facsimile: (443) 263-4198
E-Mail: skossman@bakerdonelson.com

CERTIFICATE OF SERVICE

I certify that on February 3, 2017, I filed this Motion to File Under Seal and a Proposed Order with the Clerk of Court using the CM/ECF system, which will serve notice of this filing on all parties registered to receive such notice, including the United States of America.

/s/ Matthew C. Hicks
MATTHEW C. HICKS
Virginia Bar Number 48377
CAPLIN & DRYSDALE, CHTD.
One Thomas Circle, N.W., Suite 1100
Washington, D.C. 20005
Telephone: (202) 862-7852
Facsimile: (202) 429-3301
E-Mail: mhicks@capdale.com